FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

DISTRICT : PUNE

WRIT PETITION NO.1745 OF 2005

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders	Court's or Judge's orders

Mr A.A. Garge for Petitioners.
Ms Aparna Shinde for Respondents.

CORAM : D.K. DESHMUKH J.
DATE : 19TH OCTOBER 2005
P.C. :-

1. By the order impugned in the petition, the Court has rejected the application filed by the petitioners to take written statement on record. The suit was fixed for filing written statement before the Court on 8th August 2003. The defendants did not file written statement on that date, their lawyer was also absent. Therefore, the Court directed that the suit to proceed without written statement. an application for setting aside the order and for permission to file written statement on 23rd March 2004 i.e. about seven months after the order was passed. The only reason that is given in the application is why the lawyer for petitioners could not remain present in

Court on 8th August 2003 when no written statement was filed. The learned counsel appearing for petitioners stated before me that on 8th August 2003 the written statement of the defendants was not ready and that on that date i.e. 8th August 2003, the defendants were not in a position to file their written statement. If that is so, then the circumstance why the lawyer could not remain present in Court on 8th August 2003, in my opinion, is not relevant. Therefore, the entire application submitted by the petitioners detailing circumstance why the lawyer could not remain present in Court on 8th August 2003 was totally irrelevant and inconsequential. In the application, I do not find any reason given why the defendants could not keep their written statement ready on 8th august 2003. The learned counsel appearing for petitioners, except for saying that after 8th August 2003, the suit was adjourned to 23rd March 2004 could not given any reason why an application for taking written statement on record was not filed earlier than 23rd March 2004. In my opinion, the entire application was misconceived. Now the settled law on the

point that if the defendants do not file their written statement within a period of 90 days as laid down by the Civil Procedure Code, the Court can permit written statement to be taken on record only in exceptional circumstances. The defendants therefore were obliged to make out exceptional circumstances for taking their written statement on record. Perusal of the application filed by the petitioners shows that it gives wholly irrelevant circumstances. I do not find anything stated in the application why the defendants were not in a position to file written statement on 8th August 2003. From the application, one gets an impression that on 8th August 2003 the written statement was ready and it could not be filed in Court only because the lawyer could not remain present. But, in view of the statement made before me by the learned counsel appearing for petitioners, it is clear that on 8th August 2003, the written statement itself was not ready and therefore, even if the lawyer appearing for petitioners had appeared before the Court, there was no option to the Court, but to make an order to proceed in the suit without written

statement. Taking overall view of the matter therefore, in my opinion, no fault can be found with the order passed by the Trial Court rejecting the application filed by the petitioners. I find that the petitioners were not at all justified in challenging the order which is impugned in the petition. The petitioners have not only challenged the order, but the petitioners have also enjoyed ad-interim order of staying of the further proceedings. In my opinion, therefore, the petitioners are liable to pay costs to the respondents. Petition is rejected. The petitioners are directed to pay as and by way of costs of this petition Rs.5,000/- to the respondents.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary as true copy.

. Certified copy expedited.